



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Prishtina, on 16 August 2021
Ref. No:RK 1837/21

This translation is unofficial and serves for informational purposes only.

DECISION TO REJECT THE REFERRAL

in

Case No. KI60/21

Applicant

Nehale Lila

Constitutional review of Decision Ac. No. 6316/2020 of the Court of Appeals of Kosovo of 26 February 2021

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Gresa Caka-Nimani, President
Bajram Ljatifi, Deputy President
Selvete Gërxhaliu-Krasniqi, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Nehale Lila, from the Municipality of Gjakova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision [Ac. No. 6316/2020], of 26 February 2021, of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) in conjunction with the Decision [PPP. No. 108/2020], of 26 October 2020, of the Basic Court in Gjakova of the Republic of Kosovo (hereinafter: the Basic Court).

Subject matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly violates the Applicant's rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 (Right to a fair trial) and Article 13 (Right to an effective remedy) and Article 1 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).
4. The Applicant also requests the imposition of an interim measure on the Decision [Ac. No. 6316/2020], of 26 February 2021, of the Court of Appeals, in conjunction with the Decision [PPP. No. 108/2020], of 26 October 2020 of the Basic Court.

Legal basis

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 26 March 2021, the Applicant submitted the Referral by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 29 March 2021, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).
8. On 2 April 2021, Court notified the Applicant about the registration of the Referral and requested him to fill in the official form for the submission of the Referral to the Court.

9. On the same date, a copy of the Referral was sent to the Court of Appeals regarding the notification of the challenged Decision.
10. On 15 June 2021, the Court requested again the Applicant to submit the official referral form, the loan contract and the Mortgage Agreement No. 184278 of 02 June 2017.
11. On 7 April 2021, the Applicant received the first letter of the Court but did not respond to its requests.
12. On 17 June 2021, the Applicant received the second letter of the Court but again did not respond to its requests.
13. On 17 May 2021, pursuant to paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of President and Deputy President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Constitutional Court. Based on paragraph 4 of Rule 12 of the Rules of Procedure and Decision KK-SP 71-2/21 of the Court, it was determined that Judge Gresa Caka-Nimani will take over the duty of the President of the Court after the end of the mandate of the current President of the Court Arta Rama-Hajrizi, on 26 June 2021.
14. On 25 May 2021, based on item 1.1 of paragraph 1 of Article 9 (Prior termination of the mandate) of the Law and Rule 7 (Resignation of Judges) of the Rules of Procedure, Judge Bekim Sejdiu resigned as a judge before the Constitutional Court.
15. On 26 June 2021, pursuant to paragraph 4, of Rule 12 of the Rules of Procedure and Decision KK-SP 71-2/21 of 17 May 2021 of the Court, Judge Gresa Caka-Nimani took over the duty of the President of the Court, while based on item 1.1 of paragraph 1, of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi ended the mandate of the President and Judge of the Constitutional Court.
16. On 28 July 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court to summarily reject the Referral.

Summary of facts

17. Based on the case file, it results that, on 2 June 2017, the Applicant, in the capacity of co-borrower with her deceased husband F.L., signed the loan contract [No. 184278] with the banking institution "TEB J.S.C."(hereinafter: the creditor). It follows from the same documents, that the debt to the banking institution was transferred to the Applicant in the capacity of a co-borrower after the death of her husband F.L.
18. On 12 June 2020, the creditor submitted the enforcement proposal invoking the loan contract [No. 184278] of 2 June 2017 and the pledge agreement.

19. On 12 June 2020, the private enforcement agent by the enforcement order [P. No. 178/20] submitted the proposal for enforcement requesting the Applicant, in the capacity of the debtor to fulfill the debt in the amount of 10,463.93 euro.
20. On 17 June 2020, the Applicant against the enforcement order [P. No. 178/20], of 12 June 2020 filed an objection with the Basic Court alleging erroneous and incomplete determination of the factual situation and erroneous application of the substantive law. In her objection, the Applicant stated that the debtor in this case, F.L., was her husband who had passed away. The Applicant during this procedure also claimed that in this case there have been changes in circumstances and as a result the clause "*rebus sicstantibus*" should be applied and finally requested that the enforcement be annulled until the division of the inheritance.
21. On the same date, the creditor filed with the Basic Court the response to the objection and stated that "*the debtor's objection is not based on any of paragraphs 71 [of the LEP] and as such has no legal basis. Regarding the Debtor's claims that the borrower died, this will result in the request for the appointment of a temporary representative in accordance with the provisions of applicable laws in Kosovo and does not exempt the co-borrower from the responsibility of loan payment.*"
22. The Basic Court, on the basis of the creditor's request, appointed the Applicant as a temporary representative of her late husband.
23. On 26 October 2020, the Basic Court by Decision [PPP. No. 108/2020] rejected the Applicant's objection regarding the payment of the debt in the amount of 10,463.93 euro. The Basic Court based its Decision on Articles 21, 22, 71 and 73 of Law No. 04/L-139 on Enforcement Procedure (hereinafter: LEP) with the reasoning that: (i) the document on the basis of which the enforcement is allowed has an executive title and has features of enforcement; and (ii) found that the allegations of objection do not fall within the other grounds of Article 71 of the LEP, which if they exist may impede the permitted enforcement.
24. Against the above-mentioned decision of the Basic Court, the Applicant filed an appeal with the Court of Appeals on the grounds of erroneous and incomplete determination of factual situation, erroneous application of substantive law and essential violation of the provisions of the enforcement procedure. In her appeal, the Applicant reasoned that she was not a contracting party as a borrower or as a guarantor of the loan and that according to Article 85 of the LEP, the cash of the debtor who has a permanent monthly income is excluded from the enforcement up to the monthly amount that according to the law is exempted from enforcement and in proportion to the time limit until the next payment.
25. On 26 February 2021, the Court of Appeals by the Decision [Ac. No. 6316/2020] within the meaning of Article 77 and 17 of the LEP in conjunction with Article 209, item b) of the LCP rejected the Applicant's appeal as ungrounded.

26. The Court of Appeals, by its above-mentioned Decision, reasoned that the Decision of the Basic Court does not contain essential violation of the provisions of the contested procedure, namely is not contrary to paragraphs 1 and 2 of Article 182 of the LCP. Among others, the Court of Appeals considered that in the case of the Applicant the proposal for execution has been processed based on the enforcement document pursuant to Article 21 and 22 of the LEP.

Applicant's allegations

27. In her Referral, the Applicant alleges that the challenged Decision of the Court of Appeals violated her rights guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 46 [Protection of Property] of the Constitution, as well as Articles 6 [Right to a fair trial], 13 (Right to an effective remedy) and Article 1 (Protection of property) of Protocol 1 to the ECHR.
28. The Applicant states that: "*I did not take a loan, but the loan was taken by my now deceased husband [...]. I live in very difficult economic conditions. Why did the Court, without summoning me, appointed me a temporary representative of the now deceased [...]. I do not want to be a temporary representative of the now deceased [...].*"
29. Finally, the Applicant requests the Court to annul the challenged decision of the Court of Appeals.

Request for interim measure

30. The Applicant expressly requests the imposition of an interim measure on the challenged Decision of the Court of Appeals on the grounds "*not to enable the creditor to achieve his purpose in an unlawful manner by taking our money unlawfully*".

Assessment of the admissibility of the Referral

33. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.
34. In this respect, the Court initially refers to Articles 113.1 and 113.7 [Jurisdiction and Authorized Parties] of the Constitution, which establish:

Article 113

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."

35. The Court further examines whether the Applicant has fulfilled the admissibility requirements as prescribed by the Law. In this regard, the Court refers to Articles 47 [Individual Requests] and 48 [Accuracy of the Referral] of the Law, which establish:

Article 47
[Individual Requests]

"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.

Article 48
[Accuracy of the Referral]

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.

36. In assessing whether the Applicant meets the constitutional and legal criteria for constitutional review of her Referral, the Court recalls that based on Article 113 of the Constitution, the individuals are authorized to refer violations before the Court by "public authorities" of their individual rights and freedoms guaranteed by the Constitution, after exhaustion of all legal remedies provided by law. The same requirement is also established in Article 47 of the Law.
37. In addition, Article 48 of the Law specifically obliges the Applicants to accurately clarify the concrete act of the public authority that is subject to challenge. The same Article also obliges the Applicants to accurately clarify what rights and freedoms they claim to have been violated.
38. In this regard, the Court refers to paragraph 4 of Article 22 [Processing Referrals] of the Law, which stipulates:

"If the referral [...] is [...] incomplete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for [...] supplementing the respective referral [...]."

39. The Court further refers to Rule 32 (2) (h) [Filing of Referrals and Replies] of the Rules of Procedure, which establishes:

*(2) The referral shall also include:
[...]*

*(h) the supporting documentation and information.
[...]*

40. Also in this regard, the Court refers to Rule 35 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which establishes:

“[...]

(5) The Court may decide to summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral, if the referral is repetitive of a previous referral decided by the Court, or if the referral is frivolous”.

41. The Court recalls that the Applicant's Referral was received on 26 March 2021. Considering that the Referral was not completed, on 2 April 2021, pursuant to paragraph 4 of Article 22 (Processing Referrals) of the Law and items (f) and (g) of paragraph (2) of Rule 32 (Filing of Referrals and Replies) of the Rules of Procedure, the Court requested the Applicant to complete her Referral, namely, the official referral form within 15 (fifteen) days from the day of receipt of the first letter. The Court notes that on 7 April 2021, the Applicant received the Court's first letter to complete the form but did not respond to its requests. Consequently, on 15 June 2021, the Court again addressed the Applicant with a request to submit the official referral form, the loan contract and the Mortgage Agreement no. 184278 of 2 June 2017 within a period of 10 (ten) days. The Court notes that on 17 June 2021, the Applicant received the second letter of the Court but again did not respond to its requests.
42. In this regard, the Court refers to Rule 35 of the Rules of Procedure, which establishes as follows:

Rule 35
[Withdrawal, Dismissal and Rejection of Referrals]

“[...]

“(5) The Court may decide to summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral”.

“[...]

43. The Court notes that the above mentioned Rule of the Rules of Procedure allows the Court to summarily reject a referral if, *inter alia*, the Applicant's Referral is incomplete and unclear, despite the Court's requests to supplement and clarify the referral in question. The Court addressed a request twice to the Applicant, unsuccessfully.
44. The Court reiterates that in the circumstances of the present case, the referral is incomplete, because the official form of the Court was not completed with the necessary information and the supporting documents required by the Court by the letter of 15 June 2021 was not submitted.
45. Therefore, the Court finds that the Referral of the Applicant does not meet the procedural requirements for further review, because it is incomplete and unclear, as defined in paragraph (5) of Rule 35 of the Rules of Procedure.

46. The Court recalls that the burden of building, clarifying and supplementing the Referral falls on the Applicants, who have direct interest, so that their claims and allegations are effectively addressed by the Court. In cases when the Applicants fail to respond to the Court's request for clarification and supplementation of the Referral, the Court summarily rejects these referrals (See, *inter alia*, cases of the Cour KI48/17, *Sladana Radojković-Marinković*, Decision to reject the Referral of 4 December 2017, paragraph 21; and KI74/18, Applicant *Gëzim Murati*, Decision to reject the Referral of 3 December 2018, paragraph 26).
47. Finally, in accordance with Rule 35 (5) of the Rules of Procedure, the Referral is to be summarily rejected.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 22, 47 and 48 of the Law and in accordance with Rule 35 (5) of the Rules of Procedure, on 28 July 2021, unanimously

DECIDES

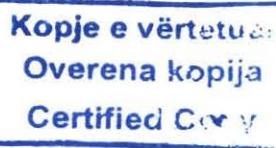
- I. TO REJECT the Referral;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

Safet Hoxha

President of the Constitutional Court

Gresa Caka-Nimani



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